

Mailing Date: MAY 28 2013

[Appeal](#)

COMMONWEALTH OF PENNSYLVANIA OFFICE OF ADMINISTRATIVE LAW JUDGE  
FOR THE PENNSYLVANIA LIQUOR CONTROL BOARD

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: Citation No.: 12-1458 LIQUOR
CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No.: W04-446706
	:	
I.B.P.O.E. OF W. BRIGHTON	:	
PIONEER LODGE NO. 219	:	PLCB LID No.: 3349
610 7 <sup>TH</sup> ST.	:	
P.O. BOX 478	:	PLCB License No.: C-2807
BEAVER FALLS, PA 15010-4531	:	
	:	
	:	

**BEFORE:** JUDGE RODERICK FRISK

APPEARANCES:

**BLCE COUNSEL:** Nadia L. Vargo, Esquire  
**LICENSEE COUNSEL:** Pro Se

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on October 3, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against I.B.P.O.E. of W. Brighton Pioneer Lodge No. 219, License Number C-2807 (hereinafter Licensee).

This citation charges Licensee with violation of Section 404 of the Liquor Code, [47 P.S. §4-404] in that on July 7, 2012, Licensee, by its servants, agents or employees, failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions upon the subject license.

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An administrative hearing was conducted on March 27, 2013, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Nadia L. Vargo, Esquire. Jon Henderson, Exalted Ruler, appeared pro se.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on May 16, 2012, and completed its investigation on August 24, 2012. (N. T. 21, 22 Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation disclosed by its investigation in a letter dated September 19, 2012, which was sent by certified mail, returned unclaimed and was unable to be forwarded. (N. T. 22 Exhibit C-2)
3. This citation was issued on October 3, 2012, and was sent by certified mail and received by Licensee on October 9, 2012. (Exhibits N.T. 28, 29 C-4, C-5)
4. Licensee entered into a Conditional Licensing Agreement (CLA) with the Board on July 23, 2008. (N. T. 30)
5. *Provision 6(a)* states the following:

“Club shall post one (1) sign at the entrance to the premises prohibiting weapons at the premises, shall use a metal detecting wand on all patrons entering the premises and shall prohibit detected weapons from being brought into the premises.”

(N. T. 38, 40)

*Provision 6(g)* states the following:

“Club shall maintain regular monthly contact with the local police in order to address any problems, and maintain records indicating the date and substance of said contact, for a period of two (2) years from the date of said contact.” (N. T. 51)

*Provision 6(i)* states the following:

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“Club shall maintain in good working order its existing surveillance system at the premises to monitor the interior and exterior of the premises and make tapes from the system available to the Board,

its employees, and to law enforcement officials, including, but not limited to, the local police department, the Bureau and the Beaver County District Attorney’s office. The tapes recorded from these cameras shall be maintained by Club for at least three (3) months. The surveillance system shall be operational, shall record images During all operating hours and shall be routinely monitored by Club employees. (N. T. 49)

6. On July 7, 2012 at 6:35 p.m., a Liquor Enforcement Officer arrived at Licensee's premises and observed no sign indicating that weapons are prohibited posted at the outside entrance or at the inner foyer entrance. (N. T. 40)
7. The Enforcement Officer rang a buzzer and the foyer door was opened by Exalted Ruler John Henderson. The Enforcement Officer identified himself to Mr. Henderson and advised that he was there to verify that Licensee was in compliance with the Conditional Licensing Agreement. (N. T. 40)
8. At this time, the Enforcement Officer did not see a sign inside the premises indicating that weapons were prohibited. (N. T. 40, 41)
9. During the verification visit, the Enforcement Officer asked to review the records of Licensee’s meetings with the local police. Mr. Henderson stated that he had not met with the police for a couple of years and he does not have any records of the meetings that were held before that time. (N. T. 68)
10. The Chief of Police for the Beaver Falls Police Department testified that within two years prior to July 7, 2012, Licensee only met with him or his officers on a few occasions relating to specific instances. Since early 2011, there were no monthly meetings between Licensee and the Beaver Falls Police Department. (N. T. 53-56)
11. When questioned about the surveillance tapes, Mr. Henderson stated that the surveillance system only maintains the tapes for 60 days. (N. T. 42)

DISCUSSION:

The record discloses that the Board and Licensee entered into a Conditional Licensing Agreement (CLA) on July 23, 2008 which placed additional restrictions upon Licensee. The present citation

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alleges that on July 7, 2012, Licensee violated the CLA dated July 23, 2008. This Court places significance on the fact that the alleged date of violation occurred subsequent to the end of the license renewal period for which the CLA was drafted. As a matter of fact, the two year license renewal period ended on June 30, 2010. The alleged violation date of July 7, 2012 occurred in the second license renewal period beyond the date of the CLA.

In order to maintain consistency in our decisions and interpretations of the Liquor Code, this Court defers to the decision of Administrative Law Judge Felix Thau in Derry Street Pub Inc., Citation No. 12-1348 dated April 26, 2013.

The present case does not involve restrictions placed on an initial license application, transfer and/or an extension of premises under Section 404 of the Liquor Code. Rather, this case involves the placement of additional restrictions on Licensee's club liquor license at the time of license renewal pursuant to Section 470(a) of the Liquor Code. Thus, the placement of additional restrictions by the Board on a Licensee in this manner can only be extended for a period of two years consistent with the two year renewal licensing cycle. However, there is nothing to prevent the Board and a Licensee to enter into the same renewal CLA endorsed by the parties for the prior two year licensing period. As expounded upon by Judge Thau in Derry Street Pub, the biannual license eligibility evaluation would be rendered meaningless if the Board were authorized to adopt and maintain a renewal CLA in perpetuity.

Therefore, it is the opinion of this Court that the Board is required to take into consideration the most recent prior record of a Licensee and permit that Licensee to redeem itself unencumbered by the additional restrictions placed upon its license by the Board as the result of prior undesirable activities associated with that license.

#### CONCLUSION OF LAW:

1. The notice requirements as prescribed by Section 471 of the Liquor Code [47 P.S. §4471] have been satisfied.
2. The Bureau has failed to establish that on July 7, 2012, the Conditional Licensing Agreement entered into between the Board and Licensee on July 23, 2008 placing additional licensing restrictions upon Licensee continued to be in effect beyond the two year license cycle which ended on June 30, 2010.

#### ORDER:

Accordingly, it is hereby ORDERED that Citation No. 12-1458 be DISMISSED.

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Jurisdiction is retained to ensure compliance with this Order.

Dated this 20<sup>TH</sup> day of MAY, 2013.



Roderick Frisk, J. clm

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.